

REMARKS

The Examiner is thanked for the thorough examination of the present application. The FINAL Office Action, however, continued to reject all claims 7-18. In response, Applicant submits the foregoing amendments and the following remarks. Specifically, claims 7, 9-11, and 13 have been amended. After entry of the foregoing amendments, claims 7-18 remain pending in the application. Applicant submits that no new matter is added by these amendments, and respectfully requests that the rejections be reconsidered and withdrawn.

Rejections under 35 U.S.C. § 101

Claims 7-12 remain rejected under 35 U.S.C. § 101. Applicant has amended claim 7 to clear overcome this rejection. In this regard, the “Interim Examination Instructions for Evaluating Patent Subject Matter Eligibility” states that “for computer implemented processes, the “machine” is often disclosed as a general purpose computer. In these cases, the general purpose computer may be sufficiently “particular” when programmed to perform the process steps. Such programming creates a new machine because a general purpose computer, in effect, becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software”. Claim 7 has been clearly and definitely amended to a computer-implemented method for balancing production capacity between different production technologies for use in a computer, wherein the computer is programmed to perform the steps of the method.

As the U.S. Court of Appeals for the Federal Circuit confirmed in its *In re Bilski*

545 F.3d 943, 88 U.S.P.Q.2d 1385 (2008) decision:

“... we ... reaffirm that the machine-or-transformation test ... is the governing test for determining patent eligibility of a process under 35 U.S.C. § 101.

...

The machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article.

The Court further stated:

In *AT&T*, we rejected a "physical limitations" test and noted that "the mere fact that a claimed invention involves inputting numbers, calculating numbers, outputting numbers, and storing numbers, in and of itself, would not render it nonstatutory subject matter." 172 F.3d at 1359 (*quoting State St.*, 149 F.3d at 1374). The same reasoning applies when the claim at issue recites fundamental principles other than mathematical algorithms. Thus, the proper inquiry under § 101 is ... whether the claim meets the machine-or-transformation test. As a result, ... a claim that purportedly lacks any "physical steps" but is still tied to a machine or achieves an eligible transformation passes muster under § 101.

Claims 7-12 of the present application clearly satisfied these legal standards.

Accordingly, Applicant submits that the rejections of claims 7-12 should be withdrawn.

Rejections under 35 U.S.C 112

The Office Action rejected claims 7-12 under 35 U.S.C. § 112, first paragraph as allegedly failing to comply with the written description requirement. The claims have been amended to clearly address and overcome these rejections. In this regard, claims have been amended to cancel the subsystems and the corresponding notifying therebetween. Accordingly, the rejections under 35 U.S.C. 112 should be withdrawn.

Rejections under 35 U.S.C 102(e)

Claims 1-4, 7-11, and 13-16 stand rejected under 35 U.S.C 102(e) as allegedly being anticipated by Wang et al., U.S. Patent Application Publication No. 2005/0038684. Applicant requests reconsideration and withdrawal of these rejections.

In regard to independent claims 7 and 13, Wang fails to disclose, suggest, or teach, *inter alia*, at least the features of those claims, as emphasized below:

“additionally generating a dummy order corresponding to the first order, wherein the dummy order and the first order are simultaneously existed in the computer”;
“reserving a first capacity of a first production technology for the first order and reserving a second capacity of a second production technology for the dummy order, wherein the first production technology and the second production technology are different”;
“when a second order requesting the first production technology is received, canceling the first order and directing the dummy order to substitute the first order, such that the first order is fulfilled by the second capacity originally reserved for the dummy order”; and
“releasing the first capacity originally reserved for the first order to fulfill the second order”.

The Examiner alleged that Wang discloses temporary or tentative order, for example, Wang paragraph [0035], discloses wherein the generated dummy order is the initial transformed order or temporary order, *i.e.*, temporary in the sense that it might be decreased depending on the machine-time based plan. However, paragraph [0035] of Wang specifically states:

“The order management module receives a purchase order for the product from a participating customer before a cutoff date, and the capacity management module rejects an order sent from other customers before the cutoff date. The capacity management module transforms the purchase order into a machine-time-based order according to the route information in the capacity model, accepts the machine-time-based

order and *decreases the reservation capacity depending on the machine-time-based plan*".

Thus, Wang only relevantly discloses a participating customer *can transmit a purchase order before the cutoff date, and other clients cannot transmit orders before the cutoff date*. The *purchase order can be transformed into the machine-time-based order, and when the machine-time-based order is accepted, the reservation capacity is therefore decreased*.

Applicant submits that in the claimed embodiments, an order, called dummy order, is **additionally** generated for a received order (first order). The received order and the dummy order exist **simultaneously** in the system. However, *nowhere in the Wang reference does it disclose the claimed features of "additionally generating a dummy order corresponding to the first order, such that the dummy order and the first order are simultaneously existed in the computer."* For at least these reasons, the rejections of independent claims 7 and 13 should be withdrawn.

In addition, in the claimed embodiments, the capacity of **different production technologies** are respectively reserved for the received order and the dummy order, wherein **a first capacity of a first production technology is reserved for the first order and a second capacity of a second production technology is reserved for the dummy order**. Again, *nowhere in the Wang reference does it disclose the claimed features of "reserving a first capacity of a first production technology for the first order and reserving a second capacity of a second production technology for the dummy order, wherein the first production technology and the second production technology are different"*.

Further still, in the claimed embodiments, when a second order requesting a first

production technology is received, **the first order is cancelled, and the first capacity originally reserved for the first order is released to fulfill the second order.**

Additionally, **the dummy order is directed to substitute the first order, such that the first order is fulfilled by the second capacity originally reserved for the dummy order. Nowhere in the Wang reference does it disclose the claimed feature of “when a second order requesting the first production technology is received, canceling the first order and directing the dummy order to substitute the first order, such that the first order is fulfilled by the second capacity originally reserved for the dummy order” and “releasing the first capacity originally reserved for the first order to fulfill the second order”.**

Since Wang fails to teach all features of the independent claims, the rejections of claims 7 and 13 should be withdrawn. Insofar as claims 8-12 depend from claim 7, and claims 14-18 depend from claim 13, these claims are similarly patentable. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596, 1600 (Fed. Cir. 1988). Further, dependent claims are also patentable based on their own features.

Conclusion

In view of the foregoing, it is believed that all pending claims are in proper condition for allowance. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

A credit card authorization is provided herewith to cover the fee associated with the accompanying RCE application. No additional fee is believed to be due in

connection with this amendment and response to Office Action. If, however, any additional fee is believed to be due, you are hereby authorized to charge any such fee to deposit account No. 20-0778.

Respectfully submitted,

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